

shall be conducted in such a manner as will minimize or reduce their environmental impact.

(e)(1) The Director of Nuclear Reactor Regulation may authorize an applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b) (2) or (3) or § 50.22 or is a testing facility to conduct the following activities: (i) Preparation of the site for construction of the facility (including such activities as clearing, grading, construction of temporary access roads and borrow areas); (ii) installation of temporary construction support facilities (including such items as warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings); (iii) excavation for facility structures; (iv) construction of service facilities (including such facilities as roadways, paving, railroad spurs, fencing, exterior utility and lighting systems, transmission lines, and sanitary sewerage treatment facilities); and (v) the construction of structures, systems and components which do not prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. No such authorization shall be granted unless the staff has completed a final environmental impact statement on the issuance of the construction permit as required by subpart A of part 51 of this chapter.

(2) Such an authorization shall be granted only after the presiding officer in the proceeding on the construction permit application (i) has made all the findings required by §§ 51.104(b) and 51.105 of this chapter to be made prior to issuance of the construction permit for the facility, and (ii) has determined that, based upon the available information and review to date, there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type proposed from the standpoint of radiological health and safety considerations under the Act and rules and regulations promulgated by the Commission pursuant thereto.

(3)(i) The Director of Nuclear Reactor Regulation may authorize an applicant

for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b) (2) or (3) or § 50.22 or is a testing facility to conduct, in addition to the activities described in paragraph (e)(1) of this section, the installation of structural foundations, including any necessary subsurface preparation, for structures, systems and components which prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.

(ii) Such an authorization, which may be combined with the authorization described in paragraph (e)(1) of this section, or may be granted at a later time, shall be granted only after the presiding officer in the proceeding on the construction permit application has, in addition to making the findings and determinations required by paragraph (e)(2) of this section, determined that there are no unresolved safety issues relating to the additional activities that may be authorized pursuant to this paragraph that would constitute good cause for withholding authorization.

(4) Any activities undertaken pursuant to an authorization granted under this paragraph shall be entirely at the risk of the applicant and, except as to matters determined under paragraphs (e)(2) and (e)(3)(ii), the grant of the authorization shall have no bearing on the issuance of a construction permit with respect to the requirements of the Act, and rules, regulations, or orders promulgated pursuant thereto.

[21 FR 355, Jan. 19, 1956, as amended at 25 FR 8712, Sept. 9, 1960; 33 FR 2381, Jan. 31, 1968; 35 FR 11460, July 7, 1970; 37 FR 5748, Mar. 21, 1972; 39 FR 14508, Apr. 24, 1974; 39 FR 26279, July 18, 1974; 39 FR 33202, Sept. 16, 1974; 43 FR 6924, Feb. 17, 1978; 49 FR 9403, Mar. 12, 1984]

#### **§ 50.11 Exceptions and exemptions from licensing requirements.**

Nothing in this part shall be deemed to require a license for:

(a) The manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 91 of the Act, or the use of such facility by the Department of Defense or by a person

under contract with and for the account of the Department of Defense;

(b) Except to the extent that Administration facilities of the types subject to licensing pursuant to section 202 of the Energy Reorganization Act of 1974<sup>2</sup> are involved;

(1)(i) The processing, fabrication or refining of special nuclear material or the separation of special nuclear material, or the separation of special nuclear material from other substances by a prime contractor of the Department under a prime contract for:

(A) The performance of work for the Department at a United States government-owned or controlled site;

(B) Research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof; or

(C) The use or operation of a production or utilization facility in a United States owned vehicle or vessel; or

(ii) By a prime contractor or subcontractor of the Commission or the Department under a prime contract or subcontract when the Commission determines that the exemption of the prime contractor or subcontractor is authorized by law; and that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety;

(2)(i) The construction or operation of a production or utilization facility for the Department at a United States government-owned or controlled site, including the transportation of the production or utilization facility to or from such site and the performance of contract services during temporary

interruptions of such transportation; or the construction or operation of a production or utilization facility for the Department in the performance of research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof; or the use or operation of a production or utilization facility for the Department in a United States government-owned vehicle or vessel: *Provided*, That such activities are conducted by a prime contractor of the Department under a prime contract with the Department.

(ii) The construction or operation of a production or utilization facility by a prime contractor or subcontractor of the Commission or the Department under his prime contract or subcontract when the Commission determines that the exemption of the prime contractor or subcontractor is authorized by law; and that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

(c) The transportation or possession of any production or utilization facility by a common or contract carrier or warehousemen in the regular course of carriage for another or storage incident thereto.

[40 FR 8788, Mar. 3, 1975]

#### § 50.12 Specific exemptions.

(a) The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—

(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

(2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—

(i) Application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission; or

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the

<sup>2</sup>The Department facilities identified in section 202 are:

(1) Demonstration Liquid Metal Fast Breeder reactors when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.

(2) Other demonstration nuclear reactors, except those in existence on January 19, 1975, when operated as part of the power generation facilities of an electric utility system, or when operated in any other manner for the purpose of demonstrating the suitability for commercial application of such a reactor.